

AMENDED IN SENATE APRIL 11, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1433

Introduced by Senator Alquist

February 24, 2012

An act to amend Sections 6306 and 6389 of the Family Code, and to amend Section 18250 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as amended, Alquist. Domestic violence: protective orders.

The Domestic Violence Prevention Act requires the court, prior to a hearing on the issuance or denial of a protective order, to ensure that a search of specified records and databases is or has been made to determine if the proposed subject of the order has any specified prior criminal convictions or outstanding warrants, is on parole or probation, or is or was the subject of other protective or restraining orders.

This bill would further require the court to ensure that the search described above also includes a determination of whether the proposed subject of the order has a registered firearm.

Existing law prohibits a person subject to a protective order, as defined, from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect and makes a willful and knowing violation of a protective order a crime. Existing law also requires the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in the respondent's immediate control. Existing law requires the respondent to immediately surrender the firearm in a safe manner, upon request of any law enforcement officer, or within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling

the firearm to a licensed gun dealer. Under existing law, a person ordered to relinquish any firearm is required to file with the court a receipt showing the firearm was surrendered or sold within 48 hours after receiving the order.

This bill would require a peace officer serving a protective order that indicates a respondent possesses weapons or ammunition to request that the firearm be immediately surrendered. The bill would also require a person ordered to relinquish a firearm to file a copy of the receipt described above with the local law enforcement agency that served the protective order within 48 hours after being served with the order. Because a willful and knowing violation of a protective order is a crime, the bill would expand the scope of an existing crime, resulting in a state-mandated local program.

The bill would require that the above provisions be implemented in those courts identified by the Judicial Council as having resources currently available for those purposes. The bill would require that its provisions be implemented in other courts to the extent that funds are appropriated for the purposes of the act in the annual Budget Act.

Existing law requires specified law enforcement officers to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a lawful search, as specified, when present at the scene of a domestic violence incident involving a threat to human life or physical assault.

This bill would apply the requirements described above to law enforcement officers serving a protective order, as defined. By imposing additional duties on local law enforcement officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 6306 of the Family Code is amended to read:

6306. (a) Prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior criminal conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has any misdemeanor conviction involving domestic violence, weapons, or other violence; has any outstanding warrant; is currently on parole or probation; has a registered firearm; or has any prior restraining order or any violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court, including, but not limited to, the following:

(1) The Violent Crime Information Network (VCIN).
(2) The Supervised Release File.
(3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(4) The Federal Bureau of Investigation's nationwide database.

(5) Locally maintained criminal history records or databases.

However, a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database.

(b) (1) Prior to deciding whether to issue an order under this part or when determining appropriate temporary custody and visitation orders, the court shall consider the following information obtained pursuant to a search conducted under subdivision (a): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(2) Information obtained as a result of the search that does not involve a conviction described in this subdivision shall not be considered by the court in making a determination regarding the issuance of an order pursuant to this part. That information shall

1 be destroyed and shall not become part of the public file in this or
2 any other civil proceeding.

3 (c) (1) After issuing its ruling, the court shall advise the parties
4 that they may request the information described in subdivision (b)
5 upon which the court relied. The court shall admonish the party
6 seeking the proposed order that it is unlawful, pursuant to Sections
7 11142 and 13303 of the Penal Code, to willfully release the
8 information, except as authorized by law.

9 (2) Upon the request of either party to obtain the information
10 described in subdivision (b) upon which the court relied, the court
11 shall release the information to the parties or, upon either party's
12 request, to his or her attorney in that proceeding.

13 (3) The party seeking the proposed order may release the
14 information to his or her counsel, court personnel, and
15 court-appointed mediators for the purpose of seeking judicial
16 review of the court's order or for purposes of court proceedings
17 under Section 213.5 of the Welfare and Institutions Code.

18 (d) Any information obtained as a result of the search conducted
19 pursuant to subdivision (a) and relied upon by the court shall be
20 maintained in a confidential case file and shall not become part of
21 the public file in the proceeding or any other civil proceeding.
22 However, the contents of the confidential case file shall be
23 disclosed to the court-appointed mediator assigned to the case or
24 to a child custody evaluator appointed by the court pursuant to
25 Section 3111 of the Family Code or Section 730 of the Evidence
26 Code. All court-appointed mediators and child custody evaluators
27 appointed or contracted by the court pursuant to Section 3111 of
28 the Family Code or Section 730 of the Evidence Code who may
29 receive information from the search conducted pursuant to
30 subdivision (a) shall be subject to, and shall comply with, the
31 California Law Enforcement Telecommunications System policies,
32 practices, and procedures adopted pursuant to Section 15160 of
33 the Government Code.

34 (e) If the results of the search conducted pursuant to subdivision
35 (a) indicate that an outstanding warrant exists against the subject
36 of the order, the court shall order the clerk of the court to
37 immediately notify, by the most effective means available,
38 appropriate law enforcement officials of the issuance and contents
39 of any protective order and of any other information obtained
40 through the search that the court determines is appropriate. The

1 law enforcement officials so notified shall take all actions necessary
2 to execute any outstanding warrants or any other actions, with
3 respect to the restrained person, as appropriate and as soon as
4 practicable.

5 (f) If the results of the search conducted pursuant to subdivision
6 (a) indicate that the subject of the order is currently on parole or
7 probation, the court shall order the clerk of the court to immediately
8 notify, by the most effective means available, the appropriate parole
9 or probation officer of the issuance and contents of any protective
10 order issued by the court and of any other information obtained
11 through the search that the court determines is appropriate. That
12 officer shall take all actions necessary to revoke any parole or
13 probation, or any other actions, with respect to the restrained
14 person, as appropriate and as soon as practicable.

15 (g) Nothing in this section shall delay the granting of an
16 application for an order that may otherwise be granted without the
17 information resulting from the database search. If the court finds
18 that a protective order under this part should be granted on the
19 basis of the affidavit presented with the petition, the court shall
20 issue the protective order and shall then ensure that a search is
21 conducted pursuant to subdivision (a) prior to the hearing.

22 SEC. 2. Section 6389 of the Family Code is amended to read:

23 6389. (a) A person subject to a protective order, as defined in
24 Section 6218, shall not own, possess, purchase, or receive a firearm
25 or ammunition while that protective order is in effect. Every person
26 who owns, possesses, purchases or receives, or attempts to purchase
27 or receive a firearm or ammunition while the protective order is
28 in effect is punishable pursuant to Section 29825 of the Penal Code.

29 (b) On all forms providing notice that a protective order has
30 been requested or granted, the Judicial Council shall include a
31 notice that, upon service of the order, the respondent shall be
32 ordered to relinquish possession or control of any firearms and not
33 to purchase or receive or attempt to purchase or receive any
34 firearms for a period not to exceed the duration of the restraining
35 order.

36 (c) (1) Upon issuance of a protective order, as defined in Section
37 6218, the court shall order the respondent to relinquish any firearm
38 in the respondent's immediate possession or control or subject to
39 the respondent's immediate possession or control.

(2) The relinquishment ordered pursuant to paragraph (1) shall occur by immediately surrendering the firearm in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the protective order. A law enforcement officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm be immediately surrendered. Alternatively, if no request is made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6 of the Penal Code. The law enforcement officer or licensed gun dealer taking possession of the firearm pursuant to this subdivision shall issue a receipt to the person relinquishing the firearm at the time of relinquishment. A person ordered to relinquish any firearm pursuant to this subdivision shall, within 48 hours of after being served with the order, do both of the following:

(A) File, with the court that issued the protective order, the receipt showing the firearm was surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the protective order.

(B) File a copy of the receipt described in subparagraph (A) with the law enforcement agency that served the protective order. Failure to timely file a copy of the receipt shall constitute a violation of the protective order.

(3) The forms for protective orders adopted by the Judicial Council and approved by the Department of Justice shall require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent.

(4) It is recommended that every law enforcement agency in the state develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms.

~~(5) Upon a showing of probable cause, the family court may order a law enforcement officer to serve the protective order and~~

1 ~~issue a warrant for the search and seizure of any firearm in the~~
2 ~~possession of the respondent.~~

3 (d) If the respondent declines to relinquish possession of any
4 firearm based on the assertion of the right against
5 self-incrimination, as provided by the Fifth Amendment to the
6 United States Constitution and Section 15 of Article I of the
7 California Constitution, the court may grant use immunity for the
8 act of relinquishing the firearm required under this section.

9 (e) A local law enforcement agency may charge the respondent
10 a fee for the storage of any firearm pursuant to this section. This
11 fee shall not exceed the actual cost incurred by the local law
12 enforcement agency for the storage of the firearm. For purposes
13 of this subdivision, “actual cost” means expenses directly related
14 to taking possession of a firearm, storing the firearm, and
15 surrendering possession of the firearm to a licensed dealer as
16 defined in Section 26700 of the Penal Code or to the respondent.

17 (f) The restraining order requiring a person to relinquish a
18 firearm pursuant to subdivision (c) shall state on its face that the
19 respondent is prohibited from owning, possessing, purchasing, or
20 receiving a firearm while the protective order is in effect and that
21 the firearm shall be relinquished to the local law enforcement
22 agency for that jurisdiction or sold to a licensed gun dealer, and
23 that proof of surrender or sale shall be filed with the court within
24 a specified period of receipt of the order. The order shall also state
25 on its face the expiration date for relinquishment. Nothing in this
26 section shall limit a respondent’s right under existing law to petition
27 the court at a later date for modification of the order.

28 (g) The restraining order requiring a person to relinquish a
29 firearm pursuant to subdivision (c) shall prohibit the person from
30 possessing or controlling any firearm for the duration of the order.
31 At the expiration of the order, the local law enforcement agency
32 shall return possession of any surrendered firearm to the
33 respondent, within five days after the expiration of the
34 relinquishment order, unless the local law enforcement agency
35 determines that (1) the firearm has been stolen, (2) the respondent
36 is prohibited from possessing a firearm because the respondent is
37 in any prohibited class for the possession of firearms, as defined
38 in Chapter 2 (commencing with Section 29800) and Chapter 3
39 (commencing with Section 29900) of Division 9 of Title 4 of Part
40 6 of the Penal Code and Sections 8100 and 8103 of the Welfare

1 and Institutions Code, or (3) another successive restraining order
2 is issued against the respondent under this section. If the local law
3 enforcement agency determines that the respondent is the legal
4 owner of any firearm deposited with the local law enforcement
5 agency and is prohibited from possessing any firearm, the
6 respondent shall be entitled to sell or transfer the firearm to a
7 licensed dealer as defined in Section 26700 of the Penal Code. If
8 the firearm has been stolen, the firearm shall be restored to the
9 lawful owner upon his or her identification of the firearm and proof
10 of ownership.

11 (h) The court may, as part of the relinquishment order, grant an
12 exemption from the relinquishment requirements of this section
13 for a particular firearm if the respondent can show that a particular
14 firearm is necessary as a condition of continued employment and
15 that the current employer is unable to reassign the respondent to
16 another position where a firearm is unnecessary. If an exemption
17 is granted pursuant to this subdivision, the order shall provide that
18 the firearm shall be in the physical possession of the respondent
19 only during scheduled work hours and during travel to and from
20 his or her place of employment. In any case involving a peace
21 officer who as a condition of employment and whose personal
22 safety depends on the ability to carry a firearm, a court may allow
23 the peace officer to continue to carry a firearm, either on duty or
24 off duty, if the court finds by a preponderance of the evidence that
25 the officer does not pose a threat of harm. Prior to making this
26 finding, the court shall require a mandatory psychological
27 evaluation of the peace officer and may require the peace officer
28 to enter into counseling or other remedial treatment program to
29 deal with any propensity for domestic violence.

30 (i) During the period of the relinquishment order, a respondent
31 is entitled to make one sale of all firearms that are in the possession
32 of a local law enforcement agency pursuant to this section. A
33 licensed gun dealer, who presents a local law enforcement agency
34 with a bill of sale indicating that all firearms owned by the
35 respondent that are in the possession of the local law enforcement
36 agency have been sold by the respondent to the licensed gun dealer,
37 shall be given possession of those firearms, at the location where
38 a respondent's firearms are stored, within five days of presenting
39 the local law enforcement agency with a bill of sale.

1 (j) The disposition of any unclaimed property under this section
2 shall be made pursuant to Section 1413 of the Penal Code.

3 (k) The return of a firearm to any person pursuant to subdivision
4 (g) shall not be subject to the requirements of Section 27545 of
5 the Penal Code.

6 (l) If the respondent notifies the court that he or she owns a
7 firearm that is not in his or her immediate possession, the court
8 may limit the order to exclude that firearm if the judge is satisfied
9 the respondent is unable to gain access to that firearm while the
10 protective order is in effect.

11 (m) Any respondent to a protective order who violates any order
12 issued pursuant to this section shall be punished under the
13 provisions of Section 29825 of the Penal Code.

14 SEC. 3. Section 18250 of the Penal Code is amended to read:

15 18250. If any of the following persons is at the scene of a
16 domestic violence incident involving a threat to human life or a
17 physical assault, or is serving a protective order as defined in
18 Section 6218 of the Family Code, that person shall take temporary
19 custody of any firearm or other deadly weapon in plain sight or
20 discovered pursuant to a consensual or other lawful search as
21 necessary for the protection of the peace officer or other persons
22 present:

23 (a) A sheriff, undersheriff, deputy sheriff, marshal, deputy
24 marshal, or police officer of a city, as defined in subdivision (a)
25 of Section 830.1.

26 (b) A peace officer of the Department of the California Highway
27 Patrol, as defined in subdivision (a) of Section 830.2.

28 (c) A member of the University of California Police Department,
29 as defined in subdivision (b) of Section 830.2.

30 (d) An officer listed in Section 830.6, while acting in the course
31 and scope of the officer's employment as a peace officer.

32 (e) A member of a California State University Police
33 Department, as defined in subdivision (c) of Section 830.2.

34 (f) A peace officer of the Department of Parks and Recreation,
35 as defined in subdivision (f) of Section 830.2.

36 (g) A peace officer, as defined in subdivision (d) of Section
37 830.31.

38 (h) A peace officer, as defined in subdivisions (a) and (b) of
39 Section 830.32.

40 (i) A peace officer, as defined in Section 830.5.

1 *SEC. 4. Section 1 of this act shall be implemented pursuant to*
2 *the provisions of Section 7 of Chapter 572 of the Statutes of 2001.*

3 ~~SEC. 4.~~

4 *SEC. 5.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution for certain
6 costs that may be incurred by a local agency or school district
7 because, in that regard, this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty for a crime
9 or infraction, within the meaning of Section 17556 of the
10 Government Code, or changes the definition of a crime within the
11 meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 However, if the Commission on State Mandates determines that
14 this act contains other costs mandated by the state, reimbursement
15 to local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.